



**FOLEY
HOAG LLP**
ATTORNEYS AT LAW

December 17, 2004

Mary Beth Gentleman
Boston Office
617-832-1199
MGentleman@foleyhoag.com

Mary L. Cottrell
Secretary
Commonwealth of Massachusetts
Department of Telecommunications & Energy
One South Station
Boston, MA 02110

Re: Boston Edison Company and Commonwealth Electric Company, d/b/a/
NSTAR Electric, D.T.E. 04-70

Dear Secretary Cottrell:

Pursuant to the procedural schedule adopted in the above referenced proceeding, Dartmouth Power Associates Limited Partnership ("Dartmouth") hereby files this letter with the Department of Telecommunications and Energy ("Department" or "DTE") as its Reply Brief. This reply is provided for the limited purpose of addressing the portion of the Initial Brief of the Attorney General ("AG Brief") in which the Attorney General argues that the Department should reject the proposal by Boston Edison Company and Commonwealth Electric Company ("NSTAR") to include within the balance to be securitized the amount to be paid by NSTAR in connection with the Dartmouth Purchase and Sale Agreement (the "Dartmouth Agreement").¹ The AG's position is based on an argument already presented in the Department's pending investigation into NSTAR's request for approval of the Dartmouth Agreement, D.T.E. 04-78, and is not appropriately reargued in this docket. However, Dartmouth is compelled to respond here to ensure that the fundamental flaws of that argument are demonstrated in the record here.²

In his Brief, the Attorney General has again urged the Department to deny to NSTAR's customers savings that the record here demonstrates would result from approval of the Dartmouth Agreement. Exh. RR-DTE-5 (customer savings would be reduced by \$13 million if the payment required under Dartmouth Agreement ("Dartmouth Payment") is not included in the amount to be securitized). As in D.T.E.

¹ Silence with regard to any other assertion, position or argument in the AG Brief should not be interpreted, treated or otherwise construed to constitute agreement, assent, or acquiescence by Dartmouth.

² In order to facilitate efficient consideration of the Attorney General's attempt to raise here issues properly raised and decided in D.T.E. 04-78, Dartmouth requests that the Department take administrative notice of the briefs filed by the parties in that proceeding. In this reply, Dartmouth refers to two briefs filed in D.T.E. 04-78: the Initial Brief of the Attorney General ("04-78 AG Brief") and the Reply Brief of Commonwealth Electric Company d/b/a/ NSTAR Electric ("04-78 NSTAR Reply Brief").

04-78, the Attorney General's position here is based on a bald assertion that the Department should evaluate the Dartmouth Agreement piecemeal and, notwithstanding \$13 million of expected savings, conclude that NSTAR has somehow failed to "maximize" or "fully" mitigate the costs associated with the Dartmouth Agreement. *Compare* AG Brief, pp. 4-5 *with* 04-78 AG Brief, pp. 4-5. It is important to note that the Attorney General acknowledges that, even by his newly fashioned standard, the Dartmouth Agreement, as negotiated, provided savings for customers. AG Brief at p. 5, n. 6. However, the Attorney General argues that the Department should now reject securitization of the Dartmouth Payment because a recent update of a forecast of future energy costs indicates that, if not securitized, the Dartmouth Payment could increase costs for customers. That position, however, is without merit. The Attorney General's arguments are not supported by the facts in D.T.E. 04-78, and contravenes directly the basic purpose for which the General Court authorized the use of securitization in connection with the restructuring or termination of purchase power contracts, i.e., "in order to achieve reductions in the transition charges." G.L. c. 164, § 1G(d)(2)(i).

First, there is no Dartmouth Agreement without securitization. Issuance of a "Financing Order" by the Department authorizing securitization of the Dartmouth Payment is an express condition of the Dartmouth Agreement. Exh. NSTAR-1, Appendix A at 4-5. Contrary to the Attorney General's characterization (AG Brief, pp. 4-5), there are not "two transactions" to be evaluated; there is only one integrated transaction. Second, as already briefed in detail by NSTAR, the most recent forecast of the value of the Dartmouth Agreement demonstrates that approval of the Dartmouth Agreement will yield significant benefits to consumers.³ Third, notwithstanding NSTAR's earlier detailed explanation the fundamental flaws in the Attorney General's interpretation of the terms of G.L. c. 164, §§ 1G and 1H, 04-78 NSTAR Reply Brief, pp. 2-8, the Attorney General remains silent on how his position can be reconciled with the actual terms of the General Laws. He offers no explanation, much less authority, to support his interpretation or rebut NSTAR's position. Under these circumstances, the Attorney General's position should be rejected by the Department.

Indeed, it should be emphasized that the record here makes clear that adoption of the Attorney General's attempt to rewrite the terms of the 1997 Restructuring Act would not only deprive Commonwealth's customers of the significant savings to be achieved under the Dartmouth Agreement, but would increase the effective interest rate on the remaining amounts to be securitized, and thereby further reduce savings for customers. This is true for several reasons. First, many of the fixed costs of the financing will not

³ These savings estimates are quite robust. In stark contrast to the Attorney General's reliance upon a single forecast issued at the height of an earlier run-up of energy prices that incorporates forecast effects from the adoption of ISO-NE's proposed Locational Installed Capacity requirements that are far from certain, the Company has explained that as a result of several conservative assumptions and estimation methodologies in its analysis (e.g., overstated future capacity factors and end-of-year, rather than mid-year discounting), the \$13 million estimate of savings "likely understates actual consumer savings." 04-78 NSTAR Reply Brief, pp. 4-5, n. 3 and 4.

vary proportionately with the balance to be financed so that excluding the cost of the Dartmouth Payment from the amount to be securitized will raise the effective cost of securitizing the remaining balance. Exh. DTE-RR-5, pp. 1-2. Second, depending upon market conditions at the time of the actual issuance, the record suggests that reducing the size of the issuance could increase the coupon interest rate from a few basis points to between five and fifteen. Tr. 1, pp. 69-70; Tr. 2, p. 163; Exh. DTE-RR-5. Regardless of the magnitude of the impact on the coupon interest rates, it is clear that adoption of the Attorney General's position will not only deprive NSTAR's customers of \$13 million in savings achieved under the Dartmouth Agreement, but it will also reduce the savings to be achieved from any securitization approved in this proceeding.

Wherefore, for all of the foregoing reasons, Dartmouth urges the Department to reject the Attorney General's argument that the Dartmouth Payment should not be included in the amount approved in the connection with the Financing Order requested by NSTAR.⁴

Respectfully submitted,

Dartmouth Power

By its attorneys,



Mary Beth Gentleman
Andrew Fagenholz
Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02210
(617) 832-1000

⁴ While Dartmouth does not have any position on the Attorney General's argument that the maturity of the proposed bond issuance should extend to "match ... the longest lived transaction cost that it is securitizing," it does note that such an action would not violate any term of the Dartmouth Agreement.

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

D.T.E. 04-70

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing documents upon all persons below in accordance with the requirements of 220 C.M.R. § 1.03(1) and the procedural rules in this docket.

Dated at Boston this 17th day of December, 2004.



Mary Beth Gentleman
Andrew Fagenholz
Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02210
(617) 832-1199

Mary L. Cottrell, Secretary
Department of Telecommunications and
Energy
One South Station
Boston, MA 02210

Joan Foster Evans, Hearing Officer
Department of Telecommunications and
Energy
One South Station
Boston, MA 02110

Robert N. Werlin, Esq.
John K. Habib, Esq.
Keegan, Werlin & Pabian, LLP
265 Franklin Street
Boston, MA 02110

Colleen McConnell, Esquire
Assistant Attorney General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108